

SUMMARY OF ATTORNEY GENERAL'S PROPOSED TOBACCO RULES

The Attorney General has proposed two sets of proposed regulations governing the sale, distribution and advertising of tobacco products. One set addresses cigarettes and smokeless tobacco. 940 CMR 2.00. The other addresses cigars and little cigars. 940 CMR 1.00. The proposed regulations would become effective six months after promulgation. Public hearings on the proposed regulations will be held in Boston on May 20 and in Springfield on May 21. Written comments must be filed by June 19.

The Attorney General's proposed regulations would (1) prohibit a variety of sales and advertising activities by tobacco manufacturers and retailers, by defining those activities as "unfair" or "deceptive" acts or practices under M.G.L. ch. 93A, Sec. 2(c); (2) require retailers to undertake a variety of activities, as a condition of being able to sell tobacco products without being held in violation of ch. 93A; and (3) prescribe health warnings for packages of cigars and little cigars sold in Massachusetts and advertisements for such products within Massachusetts.

SALES RESTRICTIONS

- *Ban* distribution of product samples and promotional product give-aways. Ban would apparently apply anywhere a consumer "can purchase or otherwise obtain" the product.
- *Ban* sale of single cigarettes or little cigars, and ban sale of cigarettes, little cigars and smokeless tobacco products in any quantity smaller than smallest package from manufacturer.
- *Ban* mail distribution of product, in redemption of coupons or proofs of purchase, or as samples (but mail-order sale with 18-year-old age verification would not be banned).
- *Ban* sale of product with "gift" of non-tobacco merchandise (*e.g.*, lighters, caps)
- *Ban* self-service displays and vending machines except in facilities to which individuals under 18 (apparently including clerks and other employees) are denied access at all times.

RETAILER REQUIREMENTS

- Retailers must implement and operate employee training programs to promote compliance with laws prohibiting sales to minors. These programs must, at a minimum, meet the guidelines set forth in "Model Training Program for Tobacco Retailers" developed by and available from the Attorney General.
- Retailers with six or more employees must conduct in-house "secret-shopper" programs (at least three visits to each retail sales outlet per quarter).
- Retailers must post in a conspicuous place, near the sales counter, a 12" x 12" sign, in black text on white background, or in white text on black background, stating: "KIDS: SMOKING CAN KILL YOU!".

- Retailers must offer any individual under 18 who unsuccessfully attempts to buy covered tobacco products "a factsheet about underage smoking" developed by and available from the Attorney General.

ADVERTISING RESTRICTIONS

- *Ban* outdoor advertising within a 1,000-yard radius of any public playground or playground area in a public park, elementary school, or secondary school. Ban includes advertising in enclosed stadia and advertising within a retail establishment "directed toward" or "visible from" the outside of the store.
- *Ban* point-of-sale advertising in any retail establishment accessible to individuals under 18 within a 1,000-yard radius of any public playground or playground area in a public park, elementary school or secondary school.

Exception allows two signs for each manufacturer with less than a 25 percent market share, three signs for each manufacturer with 25 percent or greater market share, and one sign for the retailer for its house brand. Such advertisements may not be larger than 576 square inches "either individually or in the aggregate." Cigar and little cigar signs must devote 20 percent of each sign to the Attorney General's proposed health warnings.

CIGAR AND LITTLE CIGAR HEALTH WARNINGS

- *Ban* sale or distribution within Massachusetts of any cigar or little cigar the package of which fails to carry one of five specified health warnings, based on the current federally mandated cigarette and smokeless tobacco warnings.
- *Ban* any advertisement for cigars and little cigars disseminated within Massachusetts and directed to consumers in Massachusetts (including but not limited to billboards, magazines, newspapers, television and radio) that fails to carry one of the five specified health warnings.
- Warnings must be white text on a black background or in black text on a white background. Warnings must occupy "at least" the top 25 percent of the front panel of little cigar packages, and 25 percent of the inside cover of boxes of big cigars or any other location readily visible to consumers when display for purchase. Warnings must occupy 20 percent of the area of the advertisement. Package and advertising warnings must be rotated quarterly in alternating sequence.